

that the complaint against him was not supported by an affidavit or statutory declaration as required by section 86(3) of the Act as the real complainant should have been counsel who acted for the defendants in the criminal proceedings. We are of the opinion that this ground is without any substance.

Another ground was that he had not been given a fair and proper hearing and investigation of the charges made against him by the Law Society. The relevant sections of the Act dealing with disciplinary proceedings against an advocate and solicitor have, in our opinion, clearly been complied with. The respondent submitted that the President of the Law Society did not act impartially by not requiring counsel for the defendants in the magistrates' courts to make a formal complaint against him to the Law Society and by acting on the Attorney-General's letter of complaint. The respondent also submitted that he was deprived of the opportunity to fully elucidate and elaborate the whole case for and against him because the Disciplinary Committee had requested both parties to complete their submissions by 1 p.m. on the last day of the hearing. It is conceded, however, that the hearing was finally concluded at 4.30 p.m. on that day. In our judgment this ground is totally unfounded.

Another ground was that the respondent was prejudiced by the calling of the two magistrates, who tried the summons cases initiated by the respondent's clients, after both parties had closed their respective cases and despite objection by the respondent. Proceedings before the Disciplinary Committee are proceedings before a domestic tribunal and are different from proceedings before the ordinary courts. The respondent was given the opportunity and indeed questioned the magistrates at length and we find no substance in this ground.

Another ground relates to the finding that the respondent in his submissions to the magistrate's court endorsed his clients' belief that the court was prejudiced and an organ of power and his clients' fear that they could not get justice from the court. When the respondent gave evidence before the Disciplinary Committee on this alleged contempt of court all he said was he had ample justification for his statements. Before us the respondent complained that the Disciplinary Committee failed to question him on his grounds of justification and again asserted that he was justified in saying to the court that the court was prejudiced, an organ of power and a court where his clients would not get justice. In our judgment this ground is completely without substance.

The ground most relied on by the respondent was that the Disciplinary Committee had no jurisdiction to determine whether or not cause for disciplinary action exists under section 84 of the Act in respect of words spoken by Counsel during judicial proceedings which clearly amount to contempt of court. The argument is that absolute privilege attaches to words spoken by Counsel in the face of the court and the privilege covers any proceedings for disciplinary action by his professional body. That is an argument unsupported by authority so far as we are aware. It seems to us patently clear that where an advocate and solicitor,

A acting in his capacity as counsel before a court either by conduct or by words spoken does or says something, whether or not the conduct or words amount to a contempt of court, which could reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then a Disciplinary Committee properly appointed and seised of the matter has jurisdiction to decide whether or not he has been guilty of professional misconduct. In our judgment the doctrine of privilege, which is but a weapon of defence, is ineffective so far as domestic disciplinary proceedings are concerned.

C Lastly it is contended that the findings of the Disciplinary Committee were against the weight of the evidence. We disagree entirely and we accept unhesitatingly the findings of the Disciplinary Committee and the conclusion they had reached. We are also of the opinion that no case has been made out for us to interfere with the order of costs made by the Disciplinary Committee.

D We now deal with the question as to what penalty should be imposed. On the facts the conduct and the words spoken by the respondent were both disgraceful and dishonourable and we consider it our duty in the interests of the profession, of the proper administration of justice and of the public that we ought to take a serious view of this particular matter where the facts disclose professional impropriety towards a court, towards another advocate and solicitor and towards a defendant in criminal proceedings. Accordingly we order that the respondent be suspended from practice for a period of two years and that he pays the costs of this application.

Order accordingly.

F

P.G. RALPH v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) February 14, 1973]

[Singapore — Magistrate's Appeal No. 47 of 1972]

G

Penal Code, s. 408 — Criminal breach of trust — Bribery and corruption — Deceiving principal — Prevention of Corruption Act (Cap. 104), s. 6(1)(c).

Criminal Law and Procedure — Appeal — Powers of appellate court — Criminal Procedure Code (Cap. 113), s. 251.

H The appellant was the former manager of South British Insurance Co. Ltd. He was convicted by the First District Judge on each of four charges of corruption under section 6(1)(c) of the Prevention of Corruption Act (Cap. 104) and a charge of criminal breach of trust in respect of some \$102,000 under section 408 of the Penal Code and sentenced to 2 years imprisonment on each of the five charge. All the charges related to one transaction namely that the accused had made a profit of some \$102,000 as a result of knowingly practising a deception on his principal company at their office at Auckland. The allegation was that he deceived the company into the belief that he had sold some 201,250 rights (which the company had been entitled to) to one Choudhury in March 1969 at 25 cents per right when in fact they were sold to others at a profit. On appeal the main question for determination was whether Choudhury was an absolutely truthful witness when he denied in evidence that he had never been approached to buy these rights in March 1969. It was contended on behalf of the appellant that the District Judge:

I (i) did not consider the confession made by Choudhury on

31st May 1971 after lunch at the Tanglin Club with the appellant's version of what had happened at the meeting;

- (ii) did not consider the fact that Choudhury had told a lie as to his reason for not going to his usual stockbrokers Fraser & Co. for the sale of his own shares, and
- (iii) misdirected himself when he found that on 5th March 1969 far from Choudhury owing money to Robert Wee, it was Robert Wee who was owing money to him.

Held: (1) the appellant's version of the meeting at Tanglin Club was not considered at the end of the whole case by the District Judge who had accepted the evidence of Choudhury on the point at the conclusion of the case for the prosecution. The District Judge did not also examine the evidence relating to the alleged confession by Choudhury in any detail and he misdirected himself on the point;

(2) the learned District Judge had failed to consider item (ii) and had misdirected himself regarding item (iii) above. In view of this the appellate court could not be sure that if the District Judge had considered and adopted the right approach to these matters, he would nevertheless have found the charges proved beyond reasonable doubt at the end of the case as a whole. The convictions on the four charges must therefore be quashed;

(3) with or without Choudhury's connivance and/or complicity in the scheme to make a profit, the charge of criminal breach of trust was proved beyond reasonable doubt. The conviction on this charge by the District Judge was well founded notwithstanding the criticisms relating to the evidence of Choudhury.

Cases referred to:-

- (1) *Soo Sing & 2 Ors. v. Public Prosecutor* [1951] M.L.J. 143.
- (2) *Lee Sang Cheah v. R.* [1964] M.L.J. 22.
- (3) *Sheo Swarup v. King Emperor* 51 T.L.R. 10.
- (4) *Mohamed Ghouse v. The King* 11 S.S.L.R. 31.
- (5) *Leitchumy v. Public Prosecutor* (1930) 1 M.C. 129.

MAGISTRATE'S CRIMINAL APPEAL.

M. Kempster Q.C. (Lim Chor Pee with him) for the appellant.

R. K. Davidson Q.C. (Allan Wong, Deputy Public Prosecutor, with him) for the respondent.

Winslow J.: This is an appeal by one P.G. Ralph, former Singapore Branch Manager of the South British Insurance Co. Ltd. of New Zealand, (hereinafter referred to as the principal), against his convictions and concurrent sentences of imprisonment of 2 years imposed on 30th March 1972 on each of 4 charges under section 6(1)(c) of the Prevention of Corruption Act (Cap. 104) and for criminal breach of trust in respect of a sum of \$102,784.96 under section 408 of the Penal Code. All these offences were alleged to have been committed during the months of March and April, 1969.

The trial commenced on 28th February 1972 and lasted throughout the whole of March 1972 at the end of which he was convicted and sentenced as above. He has been in prison since, bail having been refused twice. The appeal itself was argued before me in the week ending 17th November, 1972, having been somewhat delayed by the briefing of fresh counsel on both sides, both being Queen's Counsel, Mr. M. Kempster from London for the appellant and Mr. R. K. Davidson from New Zealand for the Public Prosecutor who was the respondent. I am most grateful to them both for the careful and zealous preparation which must have preceded their efforts at forceful and coherent presentation of their respective submissions in a some-

A what complicated case involving over 150 documentary exhibits to many of which references have had to be made constantly in order to appreciate the oral evidence recorded and the findings of the trial judge relative to both.

B The five charges, as the district judge said at the beginning of his grounds of decision, all relate to one transaction *i.e.* the allegation that the accused had made a profit to himself of the sum of \$102,784.96 as a result of knowingly practising a deception on his principal at its office in Auckland whereby the principal was deceived and misled into the belief that 201,250 rights to which it had become entitled had been sold to one Mr. Choudhury (PW6) on 5th March 1969 at 25 cents per right when they were not but had in fact been sold to others at a profit and that the appellant had thereby committed the offences charged.

C I have given the most anxious consideration to the submissions put forward on behalf of the appellant as well as the respondent to such an extent that I have had to examine the record of appeal and the documentary exhibits in some detail several times over with care before being able to reach the conclusion at which I have now arrived. It has been by no means an easy case to decide, in an appellate capacity, owing to the fact that the findings of guilt on all charges recorded by the district judge have been attacked on several grounds with a view to their reversal. This has accordingly necessitated a most anxious and critical analysis of the evidence on both sides to enable me to decide whether there is merit in any of these grounds.

D The grounds of appeal, *inter alia*, allege misdirection by the district judge on a number of material facts which gravely prejudiced the appellant, error in his assessment of the credibility of the principal prosecution witness and others and the drawing of incorrect inferences and the drawing of inferences adverse to the appellant which were capable of a construction equally in his favour. Finally, the appellant claimed that the rules of natural justice had been contravened in the district judge's conclusive acceptance of the prosecution evidence at the close of the prosecution.

E This much emerges with reasonable clarity from the evidence for the prosecution *viz.*, that the said rights were sold by the appellant through Robert Wee & Co., stockbrokers, at a profit of \$102,784.96 in excess of the figure reached at 25 cents per right. This is the minimum price he was told on 5th March 1969 to get PW6 to offer for the purchase of these rights and then to refer back to Auckland for approval thereof by the principal's board before disposing of them to him at that price.

F The appellant did not, however, refer back to head office for such approval and the said rights were disposed of by devious means, through Robert Wee & Co., some by their sale as rights on 5th and 6th March, 1969 and the bulk of the remainder disposed of between 5th and 7th March, 1969 as shares forward on his brokers' financing him in the forward purchase of a total of 201,000 shares into which the rights had been converted (see P28).

He furthermore had the letter of allocation in respect of these rights split into 403 letters of allocation at the end of February 1969 (see P15, P16) which he assigned to Robert Wee & Co. and not to PW6. The splitting and the renouncement of the rights to Robert Wee & Co. were entirely unknown to his principal and were done without its authority at all.

He furthermore caused a receipt to be made out in the name of PW6 for the sale of these rights to him at 25 cents each whereas in fact payment for the same had been made by a cashier's order issued at the request of Robert Wee & Co. (P37, P24B and P35).

On 16th April 1969 the appellant obtained scrips for the shares he had sold forward in early March before their actual date of issue on 30th April. PW6 said he was under the impression that their principal was getting rid of its rights in this fashion and raised no query. His evidence is confirmed by Mr. Guilder (PW14). Eventually, Robert Wee & Co. made out a cheque for the profits to a fictitious John Lim who was in fact the appellant. Dr. Liow (PW17) said that he obtained this exact sum as a short-term loan from the appellant which he had since repaid.

The contention of the prosecution was that PW6 had never been consulted in the matter at all, that he had never been told or approached by the appellant to buy these rights at any price and that the appellant had used his name as a potential buyer of such rights in his previous correspondence with his head office in order to induce them to agree that the rights should be sold to PW6 at 25 cents per right. This, it will be remembered, was the price he was asked to get PW6 to offer and then refer back to Auckland for approval.

The main question for determination is whether PW6 was an absolutely truthful witness when he denied in evidence that he had never been approached to buy these rights on 5th March, 1969 which the principal wanted to sell as it had no desire to increase its investment commitments.

At the end of the case for the prosecution the district judge was satisfied that the first four charges against the appellant had been established and that, in particular, the last ingredient in respect of each of these charges, namely, that the appellant knowingly used the various documents, set out in those charges, with the intention of deceiving the principal and with the knowledge that it would be misled, had been proved beyond any doubt.

The documents said to be false which were knowingly used to deceive and mislead the principal are Exhibits P19, P37, P24B and P23, being respectively a letter dated 10th March 1969 stating that he had sold the rights to PW6 at 25 cents per right, 2 receipts purporting to show receipt by the appellant on behalf of the principal from PW6 of the sum of \$50,312.50 for the sale of the said rights and finally, a credit note signed by the accused in respect of the disposal of the said rights to PW6.

With regard to the 5th charge of criminal breach of trust, the district judge said at the end of the case

A for the prosecution that he was satisfied that it had been established at that stage beyond reasonable doubt.

B Complaint was made on the appellant's behalf that the district judge had contravened the rules of natural justice in conclusively accepting the prosecution evidence at the end of the prosecution case. Reliance was placed on his statement that he was satisfied that the ingredient of knowingly using the documents set out in the first four charges with the intention and knowledge alleged had been proved beyond any doubt and that "it was clear beyond a shadow of doubt that had the appellant, to paraphrase section 173(f) of the Criminal Procedure Code, elected not to rebut the evidence of the prosecution" he would convict the appellant on the charges.

C All that the district judge was required by section 173(f) of the Criminal Procedure Code to do was to acquit an accused person at the end of the prosecution case if he found that no case against him had been made out which, unrebutted, would warrant his conviction. It is clear from the authorities which I need not here repeat that a *prima facie* case should be made out against an accused person before he is called upon for his defence, *i.e.* a case which the court finds proved, at that stage, beyond reasonable doubt (see *Soo Sing & 2 Ors. v. Public Prosecutor*⁽¹⁾).

D The district judge in this case, found that a higher standard than that required had been proved, at least in the case of the first four charges whereas in respect of the fifth charge of criminal breach of trust he was satisfied beyond reasonable doubt.

E No one can therefore quarrel with his finding on the fifth charge of proof beyond reasonable doubt at the end of the prosecution case even if he did say that the evidence against him was overwhelming.

F Before dealing with the evidence for the defence he warned himself correctly that the defence "must create a reasonable doubt on the material evidence of the prosecution" and did proceed to examine that evidence against the evidence for the prosecution which he accepted as true in order to satisfy himself that the charges on the whole of the case had been proved beyond reasonable doubt. He found that numerous documents presented during the prosecution case were material and called for an explanation. In concluding his grounds before conviction he found that the evidence of the appellant was "full of untruths and credibility-wise cannot be believed. I find that his evidence has not created any reasonable doubt on the evidence of the prosecution."

G The defence of the appellant was that he had sold the rights in question at his principal's request to PW6 at 25 cents each. He said that PW6 had asked him on 5th March, 1969 to settle his own debt to Robert Wee and keep the balance as a gift from him, PW6, should the appellant succeed in inducing Robert Wee to sell the rights at a total price exceeding the price of the rights at 25 cents each plus the debt owing by PW6 to Robert Wee. The appellant claimed that it was he who had arranged for Robert Wee to sell some shares for PW6 in January 1969 to raise sufficient ready money for him to be able to buy his own rights

when he became entitled to them after their issue later on. The appellant advanced this as an additional example of the kind of service he had performed for PW6 in the past for which he made the gift of the excess to him.

I would now revert to a confession alleged by PW6 to have been made to him at the Tanglin Club on 31st May 1971 after lunch where the appellant told him that he had informed his head office in 1969 that the rights had been sold to him, PW6, whereas in fact they had been bought by himself. According to PW6, the appellant pleaded with him to back up his story or else he would lose his job.

The appellant's version of this meeting is that he did go to Tanglin Club on 31st May 1971 to look for PW6 and that he told that he, the appellant, had no evidence of the gift which he had received. He said he mentioned that this was \$50,000 and PW6 appeared to be shaken or disturbed. The quantum of the gift had not been discussed before and PW6 would not know what it was. He said that PW6 told him he understood the position as narrated to him by the appellant. This version given by the appellant was not, however, considered at the end of the whole case by the district judge who had accepted the evidence of PW6 on this point at the conclusion of the case for the prosecution.

Further, he has not examined the evidence relating to the alleged confession made to him by the appellant at Tanglin Club in any detail and he misdirected himself by regarding Mr. Lennox-King's version of what PW6 told him about it on the telephone and at dinner on 1st June 1971 as corroboration of what PW6 said in evidence about these conversations. He said, "their evidence corroborated each other, and at the close of the prosecution case I accepted their evidence on this matter." It is elementary that such statements do not amount to corroboration as that expression is understood in criminal law.

It was of the utmost importance that this evidence of his denial of the purchase of the said rights on 5th March, 1969 and of his inculpation of the appellant should have been scrutinised with great care, especially in view of the fact that the district judge does not seem to have addressed his mind to any possible motive PW6 may have had, as Mr. Kempster submitted, for giving the evidence which he did and for the stand he took in his denials to Mr. Lennox-King with whose firm he was closely associated. It should be remembered that if he had in fact scrutinised this evidence with care he would have noticed that whereas PW6 said that he told the appellant that he would do his best to get lost so that Mr. Lennox-King could avoid seeing him, Mr. Lennox-King on the other hand, however, said that PW6 told him on the telephone the following morning that he, PW6 had told the appellant that he would not avoid seeing Mr. Lennox-King. Far from not being corroboration this was not even evidence of consistency as between the two statements on this matter!

In this critical examination of all the evidence it is pertinent to mention two other matters which Mr. Kempster for the appellant stressed on his behalf, viz,

A (1) That P.W.6 told a lie as to his reason for not going to his usual stockbrokers, Fraser & Co., for the sale of his own shares in early January, 1969 instead of going to Robert Wee & Co.

(2) That the district judge misdirected himself when he found that, on 5th March 1969, far from P.W.6 owing Robert Wee any money it was Robert Wee who was owing money to him.

There is some merit in both criticisms

B As to item (1), PW6 did say, in answer to the court at the end of his evidence, that the reason for his not going to Fraser & Co. was because he was approaching them to underwrite the rights issue. According to his own evidence, however, it was on 24th January 1969 that, as a result of the approaching them to underwrite the rights issue. According to his own evidence, however, at pages 26 and 31, it was on 24th January 1969 that, as a result of the appellant's telling him for the first time that his principal was not interested in acquiring the rights and would be selling its rights that he decided to have the rights underwritten. The sales by Robert Wee & Co. of PW6's shares however were in early January 1969 (see D16A etc.). PW6 had therefore already gone to Robert Wee & Co. before the necessity to underwrite the rights arose. Even Mr. Davidson for the prosecution admitted that the explanation by PW6 was "strange" (as he euphemistically described it) and said that it did not matter because the alleged sale of the rights was much later on i.e. on 5th March 1969. I do not agree that it does not matter. The two matters are crucial matters though separated in point of time because the defence raised them as such, the same broker being involved in both sets of transactions.

In his defence, the appellant did raise the issue of fact that it was he who arranged in early January 1969 for Robert Wee to sell PW6's shares. The district judge did not consider this aspect of the matter and the answer of PW6 to the court's own question passed without comment or consideration as to its correctness. This alone, however, would not affect the question as to whether a *prima facie* case had been established at the close of the prosecution case but it certainly merited consideration at the end of the case for the defence. It should also be remembered that PW6 said that he went to Robert Wee on the recommendation of "the late Mr. Vashist" who obviously could not be a witness.

G With regard to item (2) the district judge held that it was crucial that Exhibits D16A & B viz., the statement of account in respect of shares of PW6 sold by Robert Wee & Co. showed that the latter had withheld a sum of \$240,000, a sum substantially greater than the appellant alleged PW6 owed Robert Wee & Co. on 5th March 1969 and that therefore, far from PW6 owing Robert Wee any money, it was Robert Wee who was owing money to PW6. This, Mr. Kempster contended, was a misdirection.

H Having mentioned these two matters, at this stage, I would now return to the appellant's defence.

I Mr. Davidson for the respondent listed some 12 or 13 lies or deceits in the appellant's evidence, the main ones being:—

(1) The appellant misinformed head office that P.W.6 was not interested as set out in Ex. P13.

(2) He misled head office in P34 as to there being no buyers.
 (3) He agreed that Ex. P19 (his letter to head office of 10th March 1969) was false as to certain approaches to P.W.6 referred to therein which were in fact not made. He even told the court that he did not consider it necessary to inform his head office as to the true state of affairs viz. that there were buyers and that Rights had in fact been sold between 72 cents and 95 cents.

(4) He admitted telling the C.I.D. that P.W.6 had made no financial gain over this transaction.

(5) He said P.W.6 was financially embarrassed and that he knew P.W.6 was in a difficult position to take up his own entitlement to rights. In the same breath he said that he knew all along P.W.6 would take up his own rights.

(6) He agreed that when he told head office on 28th January 1969 at Ex. P13 that P.W.6 was not interested in acquiring rights and would probably be a seller himself he meant that P.W.6 would be a seller of his own right. He agreed however that after 28th January 1969 there was no question of P.W.6 selling any rights.

The district judge found many of these alleged untruths to be substantiated and he formed the opinion that the appellant could not give a satisfactory explanation of certain documents which he wrote to head office like Ex. P9 or of his arrangements regarding the sale of shares for PW6 or regarding the financing of the sale of rights by Robert Wee. He also found that the appellant told a deliberate lie when he said that Mr. Morgan of his head office phoned him on 5th March 1969 when in fact it was he, the appellant who phoned Mr. Morgan that day and painted such a gloomy picture of the situation that the latter asked him to get PW6 to increase his offer of 15 cents to 25 cents per right and then refer back for the principal's approval. The appellant had not told head office earlier than 3rd March about any offer by PW6. He never referred to head office before the rights were disposed of to PW6 as he claimed. It should also be noted that the appellant took no notice of Ex. P11 and Ex. D6 from his head office inquiring whether PW6 was interested in the rights and that he admitted that he never offered the rights to PW6 till 5th March 1969.

The matter which has caused me most concern is the complaint that at the end of the prosecution case he accepted without hesitation the evidence of PW6 and PW17 and found the first four charges in effect proved beyond any doubt. I have already said that there was a case proved beyond reasonable doubt at that stage. With his acceptance of Messrs. Lennox-King and Morgan as truthful witnesses no serious complaint was made and none could, in my view, have been made.

Section 251 of the Criminal Procedure Code provides that no judgment, sentence or order of a district court or magistrate's court shall be reversed or set aside unless it is shown to the satisfaction of the High Court that the judgment, acquittal, sentence or order was either wrong in law or against the weight of the evidence.

McElwaine C.J. in *Lee Sang Cheah v. Rex*⁽²⁾ referred to *Sheo Swarup v. King Emperor*,⁽³⁾ where the Privy Council "strikingly indicated the powers of an appellate court to differ from a court which saw and heard the witnesses." After observing that no distinction is drawn as regards the powers of the High Court in dealing with the appeal between an appeal

A from an order of acquittal and an appeal from a conviction the Privy Council said,

"There is, in their opinion, no foundation for the view apparently supported by the judgments of some courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has 'obstinately blundered', or has 'through incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted or mis-conducted itself as to produce a glaring miscarriage of justice or has been tricked by the defence so as to produce a similar result."

McElwaine C.J. accordingly went on to hold that,

"It is therefore competent for the appellate court to weigh the evidence, always giving proper weight and consideration to such matters as (1) the views of the trial magistrate as to credibility of witnesses; (2) the presumption of innocence in favour of the accused; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a magistrate who had the advantage of seeing the witnesses."

In the appeal before me, a critical examination of the evidence in the light of Mr. Kempster's complaints has occasioned me some doubt whether I would myself have convicted on the first four charges. The question, however, arises whether that doubt is sufficiently strong to enable me to say that the convictions in question were against the weight of the evidence or that the district judge who had the advantage of seeing and hearing the witnesses ought to have had a reasonable doubt.

His failure to consider the first of the two items of complaint regarding the lie, told by PW6 about why he went to Robert Wee & Co. instead of to Fraser & Co., his usual brokers, in early January 1969 and the strong manner in which he appears to have misdirected himself regarding the second item where he held that Robert Wee was owing money to PW6 when in fact all that Robert Wee had done was to hold a substantial sum of money in reserve as he was entitled to do, the statement of account, Ex. D16A etc. being an incomplete account, have occasioned a critical re-examination of the evidence and of his findings with regard to PW6 and PW17 whom he regarded as pure as driven snow, credibility-wise.

I have done so in order to satisfy myself whether he would have reached the same conclusions on the case as a whole on the first four charges if he had considered these matters, directed himself correctly and drawn the correct inferences.

Had the district judge considered and directed himself on these matters correctly and still reached the same forceful and enthusiastic acceptance as he did of all the evidence given on these matters by these witnesses for the prosecution of whom serious criticism was made, an appellate court would be slow to interfere with his opinion of such witnesses.

At page 135 the district judge said,

"having regard to P19, the letter dated 10th of March, 1969 from the accused to Mr. Lennox-King, informing him that the South British rights had been sold to GCKC, I asked myself: What was the necessary for the accused to have one letter of allocation (P14) split to 403 letters of allocation (P61) when the South British rights were as a whole to be sold to GCKC (P.W.6). Also, why renounce the letters of allocation in favour of Robert Wee Nominees (Pte.) Ltd. and not in favour

of GCKC? Then, there is the documentary evidence (P38A-C) that the Singapore Branch on 3rd March, 1969 paid \$403 as splitting fees. Again, if the rights were to be sold to GCKC, why incur this unnecessary expenditure? *At that stage, it seemed to me that GCKC was telling the truth, that the accused had not offered South British rights to him and that he had in fact not bought them.*"

One may well inquire why he said "at that stage" as though he was not sure or had kept an open mind before that and ceased to do so thereafter.

It should be noted that the request to split was made on 25th February, 1969. On that date the appellant had not yet received final instructions to sell the rights to PW6 at anything other than the middle market price free of brokerage failing which he was requested to sell the rights at their ruling market price.

It is true that, in his defence, the appellant said he did not inform PW6 of that offer. At the close of the prosecution, however, the district judge did not know this and the position was on 25th February 1969 far from clear as to whether the rights were in fact to be sold to PW6 at any price other than the middle market price or not.

After he found that "at that stage" PW6 seemed to be a truthful witness, the appellant hardly had a fighting chance of being believed on almost anything oral or documentary later produced in evidence which could have been construed in his favour. "Accepting the evidence of GCKC as I did", said the district judge thereafter, he found this or the other statement or document by the appellant false except where the appellant himself admitted the incorrectness or falsity thereof.

Further, his self-direction on the burden of proof calls for special mention —

"He (Mr. Harry We for the accused) said, if I understood him correctly, that even if I did not believe what the accused said, so long as his evidence was consistent with innocence, I should acquit him. He then went on to say that whilst I had to make a finding as to whether GCKC or the accused was telling the truth, if, however, a reasonable doubt had been cast by the defence, on GCKC's evidence, the accused was entitled to an acquittal on all the charges against him. On the first point that had been made, Mr. Marshall has, in my view correctly pointed out that that principle only applied to a criminal charge of dishonestly retaining stolen property, and, had no application to the charges before me. As regards the second point made by counsel for the accused, *whilst I am prepared to accept that a reasonable doubt of GCKC's evidence may matter, I am of the view that the evidence for the defence must create a reasonable doubt on the material evidence of the prosecution, for as I view the evidence, there are numerous documentary evidence which call for explanation from the accused.*"

One would have thought that a reasonable doubt concerning the evidence of GCKC (as the district judge throughout referred to PW6) was all that the appellant had to create to earn an acquittal on the first four charges at least. As his counsel on appeal, Mr. Kempster, submitted, once that approach was made to the evidence in the case as a whole, both oral and documentary, to see whether any reasonable doubt had been cast on the evidence of these two witnesses, and if such a doubt arose, all the documents made by the appellant and mentioned in the first four charges could not be said to have been proved to be false and the charges

A would accordingly have fallen to the ground. These documents, said Mr. Kempster, were the appellant's documents and the district judge was unjustified in holding that the appellant had "not a single piece of documentary evidence to back his oral evidence". It should also be added that counsel submitted on the evidence that the reason why the letters of allocation were renounced by South British to Robert Wee Nominees Ltd. and not to PW6 himself was because the latter did not deal in his own name at any time. Even in the case of the sale of his own shares in early January 1969 he used the name of his secretary, a Mrs. June Lim.

C I am therefore reluctantly compelled for all these reasons to quash the convictions on the first four charges as I cannot be sure that, if the district judge had considered and adopted the right approach to these matters, he would nevertheless have found those charges proved beyond reasonable doubt at the end of the case as a whole or that he ought to have convicted the appellant thereon. (See also *Mohamed Ghouse v. The King*⁽⁴⁾ and *Letchumy v. Public Prosecutor*⁽⁵⁾).

F I now turn to the conviction of the appellant on the fifth charge of criminal breach of trust regarding which the district judge correctly directed himself at the end of the prosecution case. Whether or not PW6 and PW17 are accepted as witnesses of absolute truth there was ample evidence that the appellant made a profit of \$102,784.96 as a result of a premeditated plan to swindle his employers. Even if he had been acting in complicity with PW6 in order to give his head office the impression that he had sold the rights to him on 5th March 1969, he misled it into believing that these rights had been sold at only 25 cents per right whereas he had arranged for Robert Wee to sell some of these rights and sell some of the shares forward at a profit before ever getting the prior approval of the board as requested. The subsequent approval of the board after they were faced with a fait accompli as a result of what the appellant had said he had done does not, in my view, excuse him. All he had been asked to do on 5th March 1969 by Mr. Morgan was to approach PW6 with a view to improving his offer of 15 cents to 25 cents and then to refer back for the approval of the principal's board. This he certainly did not do. I have already referred to his own admissions that he never approached PW6 till 5th March 1969 about these rights and some of his other lies and to his unsatisfactory evidence as a witness as a whole. H When in fact he arranged for these rights to be sold as described earlier he nevertheless committed criminal breach of trust of these assets of his principal, to wit 201,250 rights which he was holding on its behalf as its trusted branch manager in Singapore whether, as he claimed, he sold them to PW6 or not.

I Having sold in the open market albeit without authority for splitting and albeit by the devious means to which I have referred, it was the appellant's duty to hold the profits in trust for his principal. This he did not do. If, as the appellant suggested in his version of the arrangement with PW6 on 5th March 1969, these rights had been sold with the connivance of PW6 at a profit, the appellant was still bound to account to

his principal for the profit made, i.e. even if \$50,000 was paid towards liquidating the debt owed by PW6 to Robert Wee. His counsel submitted that this was done through PW17 as the medium through whom this payment was made and that the latter's evidence of a short-term loan to him by the appellant of the exact amount of the profits bristles with doubts. As Mr. Kempster pointed out, if emphasis was to be placed at all on any lack of documents, no documentary evidence was produced to support Dr. Liow's evidence that he had repaid in full the monies due to the appellant on this alleged short-term loan.

It seems to me therefore that with or without PW6's connivance and/or complicity in the scheme to make a profit, the charge of criminal breach of trust with an appropriate amendment to conform with my findings was proved beyond reasonable doubt.

I might add that, at the conclusion of the hearing on November 17th last, I had no doubt that the conviction on this charge with an appropriate amendment was well-founded, notwithstanding the criticisms relating to PW6 and PW17.

The appeal against this conviction is accordingly dismissed.

Order: Convictions on first four charges quashed and sentences set aside.

Conviction on 5th charge of criminal breach of trust sustained.

Sentence: Imprisonment of 15 months plus such number of days as will enable the accused to be released today.

Order accordingly.

Solicitors: *Chor Pee & Hin Hiong.*

INDO-AUSTRALIAN TRADING CO. LTD. v. KRISHNASAMY

[O.C.J. (Choor Singh J.) February 29, 1972]

[Singapore — Suit No. 366 of 1967]

Landlord and Tenant — Claim for possession on ground that tenant had sublet premises and received rent in excess of recoverable rent — Whether persons subtenants or licensees — Control of Rent Act (Cap. 266), s. 15(1).

In this case the plaintiffs claimed possession of certain premises from the defendant. The premises had been let to the defendant and it was alleged that the defendant had sublet portions of the premises to a number of persons and had received rent in excess of the recoverable rent. The defendant alleged that the persons were licensees and not subtenants. He produced agreements entered into between him and those persons which described the parties as licensee and licensor but which otherwise were in the standard form of tenancy agreements.

Held: the true relationship between the parties as revealed by the substance of the agreements, the conduct of the parties and all the surrounding circumstances was that of landlord and tenant and not that of licensor and licensee and therefore the plaintiffs were entitled to possession of the premises as against the defendant and to rent and mesne profits.

A Cases referred to:-

- (1) *Mancroft Wagons Ltd. v. Smith* [1951] 2 K.B. 496.
- (2) *Facchini v. Bryson* [1952] 1 T.L.R. 1386.
- (3) *Addiscombe Garden Estates Ltd. v. Crabbe & Ors.* [1957] 3 All E.R. 563.
- (4) *Abdul Rahim v. British and Malayan Trustees Ltd.* [1967] 1 M.L.J. 118.

B CIVIL SUIT.

Peter Williams for the plaintiffs.

L. A. J. Smith for the defendant.

Cur. Adv. Vult.

C Choor Singh J.: The plaintiff company is the owner of shophouse No. 100 Serangoon Road, Singapore, and it claims from the defendant possession of the said premises which is let to him on a monthly tenancy at a rent of \$115 per mensem.

D The plaintiff company bought the premises in question in July 1966 and at that time the defendant was already the tenant of the premises. After purchasing the premises the plaintiff accepted the defendant as its tenant. The defendant was then occupying the back portion of the ground floor. The front portion of the ground floor was divided into two sections with a passage in between the two sections. The area on the left of the passage was occupied by one S. V. Bhargavan, a watchmaker, who paid the defendant \$80 per month. The area on the right of the passage-way was occupied by one Pranilal, a textile dealer, who paid the defendant \$170 per mensem. The first floor of the premises was occupied by a Chinese named Wan Nam who paid the defendant \$50 per mensem. Wan Nam paid for the water and light charges in respect of the first floor. The defendant paid for all the water and light charges in respect of the ground floor and these according to him varied between \$110 and \$130 per mensem.

F On the 28th September 1966 the plaintiff company, through its solicitors, gave the defendant notice to quit which expired on the 31st October 1966. The defendant refused to vacate the premises and on the 6th March 1967, the plaintiff company issued the writ in these proceedings claiming possession of the premises from the defendant, the sum of \$460 being four months rent in respect of the months July to October 1966 and mesne profits.

G The premises come within the purview of the Control of Rent Act and the defendant claims the protection of the said Act. The plaintiff company relies on paragraph (g) of section 15(1) of the said Act which reads as follows:—

H “15—(1) In the case of all premises such an order or judgment as is referred to in section 14 of this Act may be made in any of the following cases, namely:—

I (g) where the tenant having sublet the premises or part thereof receives in respect of that subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per cent of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him.”